IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14-6-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

CRP NPD No.1459 of 2006
and
MP No.1 of 2006

Estate of Venkatesa Sarma
rep. By its Executive
Rama Devi (since deceased)
by L.Rs.
1.V.Subramanyan
2.V.Kausalya (died)
by LRs
3.K.Rohini
4.K.Kalyani
5.N.Narasimhan .. Petitioners/Petitioners
Decree Holders 3 to 6

vs

1.V.Subramanyan
2.G.Srinivasan
3.G.Venugopal
4.Vatsala Ravi .. Respondents/Respondents
Ist Decree Holder &
Judgment Debtors

(R2 to R4 are given up for Notice)

Civil revision petition preferred under Article 227 of the Constitution of India against the order dated 25.9.2006 passed in E.A.SR.No.37749 of 2006 in E.P.No.2248 of 2001 in O.S.No.3461 of 1972 on the file of the X Assistant City Civil Judge, Chennai.

For Petitioners : Mr.A.S.Narasimhan
For Respondents : Mr.K.V.Ananthakrishnan
for R1
RR2 to 4 - Given up

ORDER

Challenge is made to an order of rejection of an execution application seeking to record the full satisfaction of the decree in E.P.No.2248 of 2001 in O.S.No.3461/72 and terminate the said E.P.

2.Pending the E.P., the instant application which was rejected by the said Court, had been filed. The legal representatives of the second petitioner Kausalya, are the petitioners 3 to 5 herein. The petitioners 3 to 5 will be hereinafter referred to as the petitioners.

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3.The petitioners filed the said application alleging that they originally filed an application to implead them as legal representatives of the second decree holder, their mother namely Smt.Kausalya; that the said application was contested; but, they were directed to be impleaded as joint decree holders; that pursuant to the said order, the first respondent-decree holder amended the execution petition; that the properties belonged to one Venkatesa Sharma; that he executed a Will on 11.5.73 in which the property mentioned in the execution petition schedule was first bequeathed to the other petitioner V.Subramaniam along with another house property and a disputed land; that at that time, there was a dispute between Venkatesa Sharma and the first petitioner; that the testator Venkatessa Sharma the father of the first petitioner, expected his son to resolve the dispute with him; but, it did not take place; that therefore, Venkatesa Sharma executed a codicil on 25.1.1974 in which the vesting of the properties to V.Subramaniam is subject to the condition that he should resolve the dispute before his death; otherwise, the properties should go to the other daughters; that Subramaniam did not settle the dispute with his father during his life time and continued it thereafter also by challenging the validity of the will executed by him, when the executrix filed O.P.No.531 of 1980 due to which the O.P. was converted as TOS No.34/82; that the same was dismissed in the year 1985; that a probate was granted to the executrix on 3.5.1985; that the executrix died on 2.9.1986 not only without completing the administration of Venkatesa Sharma's Estate but also without disposing of the right of her property and about the executrix ship; that under the circumstances, Subramaniam filed O.P.No.533 of 1986, and he was appointed as the Administrator; that however, in respect of the properties of Ramadevi, the mother of the petitioner Kalyani was appointed as one of the executors of Ramadevi's estate; that while Venkatesa Sharma was alive, he instituted a suit in which a decree was passed in S.A.No.809/84 which was being executed; that after the institution of the suit in O.S.No.3461/72, Venekatesa Sharma died in 1978; that under the circumstances, Ramadevi, who got appointed as executrix in O.P.No.531/80 , got impleaded in the suit; that later she died in 1986; that in the place of the executrix, Subramaniam was appointed as Administrator and the petitioner Kalyani's mother was also along with the other Administrator of Ramadevi's properties; that the said Subramaniam did not resolve with the father; but, he wanted to grab the property as his own, contrary to the bequest made; that the first petitioner, who was the only Administrator of Venkatesa Sharma's Estate, had filed the E.P. without impleading the administrator of late Ramadevi; that Ramadevi's administrators alone have major right in the property; that they were appointed as administrators; that the petitioners herein as legal representatives of Kausalya and Govindarajan, son of Suseela, have a share of 58.33% in the property; that by virtue of the ownership and as the decree holders in S.A.No.809/84, to avoid the dispute one Rajalakshmi who was only the Headmistress of the school functioning under the Rajalakshmi Educational Trust through their trustees who are the respondents in the E.P., surrendered possession to the petitioners and their maternal aunt's son on 25.4.2005; that subsequently, when the petitioners sold the property to Rajasthani Jain Samaj Educational Trust, the respondents in the capacity as trustees of Rajalakshmi Educational Trust, have surrendered possession to the petitioners, and thus, the decree passed in the second appeal is a joint decree without any condition whatsoever; that at the time of the filing of

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E.P., the first petitioner has not obtained any orders under Order 21 Rule 15(2); that the object of the first petitioner is to grab the property without giving any respects to his own father who did not want to allow the first petitioner to enjoy the property without being amenable to his father; that since the decree did not impose any condition, delivery of possession to any one of the decree holders or his representative in interest was a valid delivery of possession; that the judgment debtor having delivered possession to the Court, the same has got to be recorded and the E.P. has to be dismissed.

4.The Court heard the learned Counsel for the petitioners, who also reiterated what has been urged before the Court below.

5.In answer to the above, it is contended by the learned Counsel for the respondents that it was V.Subramaniam, who was the only executor and who can continue the execution proceedings; that E.P. was also pending before the Court; that delivery has been ordered; that the Rajasthani Jain Samaj Educational Trust actually was an obstructor; that an application to remove the obstruction was also filed; that while the matter stood thus, the Rajasthani Jain Samaj Educational Trust filed a suit for injunction; that though the injunction was granted originally, it was subsequently vacated; and that it was also taken up in O.S.A., wherein it was also confirmed. Added further the learned Counsel that Rajasthani Jain Samaj Educational Trust tried to set up its title by entering into an agreement with the judgment debtor; that when they were unsuccessful, they managed to obtain the sale deed from the grandchildren of the said Venkatesa Sharma to set up a claim to the plaintiff; that their appeal has also been dismissed; that under the circumstances, now, this is an indirect method invented by the said Educational Trust by setting up the petitioners to file the application to see as if the possession was delivered, and pursuant to the delivery of possession to the petitioners, a sale deed has also come into force, and thus, they are in possession of the property; that under the circumstances, the lower Court was perfectly correct in dismissing the I.A., since the possession of the property was not taken pursuant to the delivery ordered by the Court, and there was no proper delivery as contemplated in law, and hence, the revision has got to be dismissed.

6.The Court below after hearing the learned Counsel on either side and also looking into the materials found that the application itself was not maintainable and rejected the same. Under the circumstances, this revision has been brought forth.

7.After careful consideration of the rival submissions made, this Court is of the considered opinion that the order of the lower Court does not require any interference in the hands of this Court.

8.As could be seen from the available materials, Mr.Subramaniam was appointed as the Administrator of the estate of Venkatesa Sharma. When the E.P. was filed, it is true that the petitioners were added as joint decree holders in the place of their mother Kousalya. As far as the execution proceedings were concerned, a question arose in CMP No.1446/2003 whether it was one brought forth by the same Educational Trust, and this Court has found that Subramaniam was the only person competent to proceed

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with the execution proceedings. Thus, it would be quite clear that there is a finding recorded by this Court that in respect of the E.P. now pending before the Court, Subramaniam was the only person to proceed with the execution. Now, it is pertinent to point out that originally, the Rajasthani Jain Samaj Educational Trust was actually found as an obstructor, and it also came up with the case to state that they were in possession of the property through the judgment debtor. When it was found difficult to proceed with, they came forward for the removal of the obstruction. A petition was filed in that regard. Apart from that, the said Trust also filed a suit in C.S.231/2006 seeking for interim injunction. The injunction though granted, was vacated shortly. Thereafter, they filed OSA 261/2006 whereby the order of dismissal of the application for injunction was affirmed. While the matter stood thus, delivery was ordered by the lower court in the E.P. At that juncture, the instant application has come up at the instance of the petitioners stating that they were having 58.33% of the suit property, and therefore, they had got possession of the same from the judgment debtor, and they have sold the same to Rajasthani Jain Samaj Educational Trust, and thus, they are in possession, and their possession must be protected in view of the sale made by the petitioners herein, and it was a sale by these petitioners who are the owners of the property of major share. Once they came forward to file a memo stating that the property was properly delivered, and the decree holder/plaintiff has taken it also, it has got to be recorded so. Now, at this juncture, the learned Counsel for the petitioner would further submit that originally the mistake that crept in was that the decree holders after getting possession from the judgment debtor, should have filed the satisfaction memo; that before that, the agreement holder namely Rajasthani Jain Samaj Educational Trust, following the sale, have rushed to the Court and sought for an injunction; that the said relief has been negatived; but, it did not mean that the owners who are the petitioners herein, could not get delivery of the property from the judgment debtor since these petitioners are also joint decree holders in the eye of law, and therefore, there is no impediment for taking the possession of the property; that pursuant to the agreement, they have sold it also, and under the circumstances, it has got to be recorded. Now, at this point of time, it is pertinent to point out that originally Rajasthani Jain Samaj Educational Trust came with a plea that they are in actual possession of the property through the judgment debtor. While there was a removal of obstruction which was sought for, they immediately came forward to file a suit. Now, it could be seen that they have purchased the property from the petitioners as if they are the decree holders, and they are entitled to get the possession of the property. All would clearly indicate that the said Samaj which has failed in its earlier attempts, set up the petitioners as if sale has been done. It is further to be pointed out that as per the orders already passed by the Court, the only person who could carry on the execution proceedings was Mr.Subramaniam, who was appointed as Administrator and nobody else. Under the circumstances, the E.P. was filed, and it was pending. Subsequently, delivery has also been ordered. Now, at this juncture, the petitioners calling themselves as joint decree holders and also having a share of 58.33% have come forward with the case, which, in the opinion of this Court, was nothing but collusive in order to defeat the decree and also the execution proceedings. Such a satisfaction memo can, at no stretch of imagination, be filed or accepted by the Court. They cannot also come

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forward to record so on the basis of an unlawful transfer which the Samaj could not do. It is clear that they set up the petitioners herein to do the same indirectly. All would be indicative of the fact that it is nothing but not only an unlawful transfer pending the execution petition, but also collusive and was also against the Court proceedings. Under the circumstances, the lower Court was perfectly correct in rejecting the application at the threshold. Hence, the order of delivery made by the lower Court, has got to be proceeded with in accordance with law.

9.In the result, this revision petition fails and the same is dismissed. No costs. Consequently, connected MP is also dismissed.

Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To:

1.The X Assistant Judge
City Civil Court
Chennai.

2. The Registrar,
City Civil Court, Chennai.

+ One cc to Mr. A.S. Narasimhan, Advocate sR 35045
+ 3 ccs to Mr. K.V. Ananthakrishnan Advocate SR 34817
nsv/
BV (co)
sg 21/6/07

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